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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,941	07/25/2003	Michael Hendricksen	37529-526001US (123)	3677

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EXAMINER	
PATEL, NIHIR B	

ART UNIT	PAPER NUMBER
3772	

MAIL DATE	DELIVERY MODE
05/27/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/627,941	HENDRICKSEN ET AL.	
	Examiner	Art Unit	
	NIHIR PATEL	3772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 October 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-44,46,47,49,53-57,59 and 70-76* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,6,7,9,19,20,25,54,59,70,72 and 76* is/are rejected.

7)☒ Claim(s) *2-5,8,10-18,21-24,26-44,46,47,49,53,55-57,71 and 73-75* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *11/11/2008*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims **1-9, 19, 21, 23-37, 42-44, 46, 47, 49, 53 and 76-77** have been considered but are moot in view of the new ground(s) of rejection.

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims **1, 6, 7, 9, 19, 20, 25, 54, 59, 72 and 76** are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims **1, 2, 10, 11 and 13-15** of **U.S. Patent No. 6,941,950**. **In reference to claim 1 of the current application,** although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claim 1 of the current application and claim 15 (as it encompasses claims 1-4, 10-14) of patent '950 lies in the fact that the patent claim includes many more elements and is thus much more specific. Thus the invention of claim 15 is in effect a "species" of the "generic"

invention of claim 1 of the current application. It has been held that the generic invention is "anticipated" by the "species". ***See In re Goodman,* 29 USPQ2d 2010 (Fed. Cir. 1993)**. Since claim 1 of the current application is anticipated by claim 15 of the patent, it is not patentably distinct from claim 15. **As to claim 6 of the current application,** the limitation can be found in claim 10. **As to claim 7 of the current application,** the limitation can be found in claim 10. **As to claim 9 of the current application,** the limitation can be found in claims 10 and 11. **As to claim 19 of the current application,** the limitation can be found in claim 13. **As to claim 20 of the current application,** the limitation can be found in claim 14. **As to claim 25 of the current application,** the limitation can be found in claim 15.

4. **In reference to claim 54 of the current application,** although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claim 54 of the current application and claim 15 (as it encompasses claims 1-4, 10-14) of patent '950 lies in the fact that the patent claim includes many more elements and is thus much more specific. Thus the invention of claim 15 is in effect a "species" of the "generic" invention of claim 54 of the current application. It has been held that the generic invention is "anticipated" by the "species". ***See In re Goodman,* 29 USPQ2d 2010 (Fed. Cir. 1993)**. Since claim 54 of the current application is anticipated by claim 15 of the patent, it is not patentably distinct from claim 15. **As to claim 59 of the current application,** the limitation can be found in claim 2.

5. **In reference to claim 70 of the current application,** although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claim 70 of the current application and claim 15 (as it encompasses claims 1-4, 10-14) of patent '950 lies in the fact that the patent claim includes many more elements and is thus much more

specific. Thus the invention of claim 15 is in effect a "species" of the "generic" invention of claim 70 of the current application. It has been held that the generic invention is "anticipated" by the "species". ***See In re Goodman,* 29 USPQ2d 2010 (Fed. Cir. 1993)**. Since claim 70 of the current application is anticipated by claim 15 of the patent, it is not patentably distinct from claim 15.

6. **In reference to claim 72 of the current application,** although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claim 72 of the current application and claim 15 (as it encompasses claims 1-4, 10-14) of patent '950 lies in the fact that the patent claim includes many more elements and is thus much more specific. Thus the invention of claim 15 is in effect a "species" of the "generic" invention of claim 72 of the current application. It has been held that the generic invention is "anticipated" by the "species". ***See In re Goodman,* 29 USPQ2d 2010 (Fed. Cir. 1993)**. Since claim 72 of the current application is anticipated by claim 15 of the patent, it is not patentably distinct from claim 15.

7. **In reference to claim 76 of the current application,** although the conflicting claims are not identical, they are not patentably distinct from each other because the difference between claim 76 of the current application and claim 15 (as it encompasses claims 1-4, 10-14) of patent '950 lies in the fact that the patent claim includes many more elements and is thus much more specific. Thus the invention of claim 15 is in effect a "species" of the "generic" invention of claim 76 of the current application. It has been held that the generic invention is "anticipated" by the "species". ***See In re Goodman,* 29 USPQ2d 2010 (Fed. Cir. 1993)**. Since claim 76 of the

current application is anticipated by claim 15 of the patent, it is not patentably distinct from claim 15.

Allowable Subject Matter

8. Claims **2-5, 8, 10-17, 21-24, 26-44, 46, 47, 49, 53, 55-57, 71, 73-75 and 77** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The prior art does not disclose the membrane that covers the entire region of the frame.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NIHIR PATEL whose telephone number is (571)272-4803. The examiner can normally be reached on 7:30 to 4:30 every other Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Bianco can be reached on (571) 272-4940. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nihir Patel/
Examiner, Art Unit 3772

/Michael Brown/

Primary Examiner, Art Unit 3772